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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/816,832	03/22/2001	Richard L. Mueller	5756-0012.30	6135
7590 09/22/2004				
PENNIE & EDMONDS LLP 1155 AVENUE OF THE AMERICAS NEW YORK, NY 10036		EXAMINER SHAY, DAVID M		
		ART UNIT PAPER NUMBER 3739		
DATE MAILED: 09/22/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/816,832

Applicant(s)

MUELLER ET AL.

Examiner

david shay

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3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

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Applicant's arguments have been fully considered, but are not convincing. At the outset the examiner respectfully invites applicant's attention to the statements of rejection in the previous office action. Claims 6-9 were rejected under Spears et al in combination with Narciso, Jr. Similarly claims 1 and 3-5 and claim 2 were rejected under Spears et al in combination with Narciso, Jr. and Spears et al in combination with Narciso, Jr. and further in view of Chen et al, respectively. The office action was further accompanied by a PTO form 892 identifying Spears et al as U.S. Patent No. 5,019,075. It is also noted that Re 34,544 is to Spears who is the sole inventor of the subject matter thereof.

Spears et al took the standard angioplasty procedure employing a guide wire and catheter insertion (see column 8, line 11-18 from example) and discusses replacing the guide wire with an optical fiber to perform the instant procedures (see column 8, lines 31-45 for example). Thus clearly Spears et al, the reference applicant to the claims in the previous office action, does show a fiber, which is slidable. Thus applicant's arguments are not convincing.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spears et al in combination with Narciso, Jr. Spears et al teaches a device as claimed except the use of a perfusion channel and the particular lumen diameter. Narciso, Jr. teaches a device as claimed except the specific recitation that the fibers are removable and the lumen diameter. It would have been obvious to the artisan of ordinary skill to employ perfusion in the device of Spears et al, since this prevents tissue damage down stream of the treatment or alternatively to employ the manifestly insertable fiber of Spears et al in the device of Narciso, Jr., since Narciso Jr. discusses no attachment of the fibers, and the catheter absent the fibers would be more flexible and thus more easily positioned, and in either case to employ a lumen diameter in the claimed range, since this is an appropriate size to accommodate the guide wire and solves no particular problem in the art, thus producing a device such as claimed.

Claims 1 and 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spears et al in combination with Narciso Jr. The teachings of Narciso, Jr. and Spears et al and the motivation for combination and modification thereof are essentially those already set forth

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regarding claims 6-9. Thus it would have been obvious to the artisan of ordinary skill to combine these old and well known teachings to produce a method such as claimed.

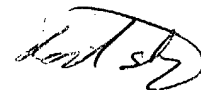
Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Spears et al in combination with Narciso, Jr. as applied to claims 1 and 3-5 are above, and further in view of Chen et al. Chen et al teach the use of e.g. hematoporphyrin derivative as a photodynamic therapy compound. It would have been obvious to the artisan of ordinary skill to employ hematoporphyrin derivative in the combined method of Narciso, Jr. and Spears et al, since the method of Narciso, Jr. is dependant on no particular compound and since this compound is widely known for its efficacy in PDT, thus producing a method such as claimed.

Applicant's arguments filed May 25, 2004 have been fully considered but they are not persuasive. The arguments are not convincing for the reasons set forth above.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to David Shay at telephone number 308-2215.



DAVID M. SHAY
PRIMARY EXAMINER
GROUP 330